In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-909

J. M. WOOD MANUFACTURING COMPANY, INC.,

PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

AND

SOUTHWEST REGIONAL JOINT BOARD, AMALGAMATED CLOTHING WORKERS OF AMERICA, AFL-CIO

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

---

1. The Company manufactures men's work clothing and sportswear in four plants located at Waco, Temple, Hillsboro, and Dublin, Texas (Pet. App. 31a; A. 10).[1] On November 25, 1968, the Union[2] filed a

[1] "A." refers to the printed appendix in the court below.

[2] The Southwest Regional Joint Board, Amalgamated Clothing Workers of America, AFL-CIO.

representation petition with the Board's Regional Director requesting certification as bargaining representative for a unit consisting of the employees at the Waco plant, the Company's principal place of business employing approximately 900 persons (Pet. App. 30a, 31a, n. 2; A. 117-119). The Company opposed the petition, contending, as it does in this Court, that the only appropriate unit was an overall unit encompassing the employees at all four of its plants (Pet. App. 31a, n. 2; A. 11-12).

After a hearing, the Regional Director concluded that a unit comprising the Waco plant was appropriate for bargaining purposes. He pointed out that "the Board has repeatedly held that a plant constituting a single-unit location is presumptively appropriate under the statute," and found that this presumption had not been rebutted here. "[T]he Waco plant embodies the complete authority held by the Employer as a subsidiary corporation, performs all functions of production from receipt of orders to delivery," and "is geographically separate, distinct, homogeneous, and completely autonomous." (Pet. App. 35a.) [3]

---

[3] The distance from Waco to the Company's other plants in Temple, Hillsboro and Dublin is, respectively, 30, 35 and 85 miles (Pet. App. 31a, n. 2). Although the Company's general manager and director of manufacturing is at Waco, each of the other plants has a plant manager who is "in command" and has authority to hire and discharge employees (Pet. App. 32a-34a). While the exercise of this authority is subject to approval by the Company's manufacturing director, there has been only one instance when a plant manager's action in this regard has been overruled (A. 67-68).

Seniority is on a plant basis for permanent transfers, job changes, layoffs and recall to work; employees who transfer from

While acknowledging that, "from the point of sharing a community of interest, there is ample support for considering all four plants as a multiplant unit" (Pet. App. 33a), the Director rejected the Company's contention that this was the only appropriate unit. The Director noted the substantial "self-autonomy on a day-to-day basis" exercised by each plant, the minimal amount of interplant transfers, and the fact that "[t]he services centrally furnished * * * [from Waco] while important to the efficiency and overall production of all plants, have an insignificant impact on the identity and day-to-day autonomy of the outside plants" (Pet. App. 33a-34a). He noted, in addition, that there was no history of bargaining on a multiplant basis, and that no union was seeking to represent the employees on a basis broader than the Waco plant (Pet. App. 33a).

Accordingly, the Regional Director ordered an election among the Waco plant employees (Pet. App. 31a, 36a-37a). (The Board denied the Company's petition for review of the Regional Director's decision (Pet. App. 2a, n. 2).) The Union subsequently was certified as the representative of those employees (Pet. App. 18a; A. 295-296). Thereafter, the Company refused to bargain, the Union filed unfair labor practice

---

one plant to another lose seniority in these areas (Pet. App. 34a). Interplant transfers of employees have been rare and job posting is done on a single plant basis (Pet. App. 34a; A. 106-107).

Production requirements for all four plants are determined at Waco and uniform personnel and industrial policies are established at Waco (Pet. App. 33a-34a). Standards of pay for employees are set at Waco and employees at all plants enjoy uniform job benefits, including holidays, vacations, and group life insurance (*ibid.*).

charges, and the Board found that the Company had violated Section 8(a)(5) and (1) of the Act (Pet. App. 18a, 24a). The Board ordered the Company to bargain with the Union upon request (Pet. App. 24a-25a, 27a).

The court of appeals enforced the Board's order (Pet. App. 1a-8a), concluding that the Board had not abused its discretion in designating the Waco plant as the bargaining unit in view of the distinct character of that plant, the distance between the plants, the day-to-day autonomy of each plant, the lack of interplant transfers, "and the extent of organization, so long as not controlling" (Pet. App. 4a).

2. Section 9(b) of the Act empowers the Board to decide "in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof * * *." The basic question presented here—whether the Board abused its broad discretion under Section 9(b) by establishing a bargaining unit limited to the employees of the Company's Waco plant—turns on the facts of this particular case and therefore does not warrant review by this Court. *Universal Camera Corp.* v. *National Labor Relations Board,* 340 U.S. 474, 491.

In any event, in view of the facts that Section 9(b) specifically recognizes the appropriateness of a plant unit, that the plants here had substantial autonomy and were geographically separated, and that there was a minimal amount of interplant transfers, there is rational basis for the Board's determination. In mak-

ing its unit determination, the Board did not violate Section 9(c)(5)[4] by relying on the fact that "[n]o union is seeking to represent the employees in all four plants" (Pet. App. 33a), since this Court has made clear that Section 9(c)(5) "was not intended to prohibit the Board from considering the extent of organization as one factor, though not the controlling factor, in its unit determination." *National Labor Relations Board* v. *Metropolitan Life Insurance Co.*, 380 U.S. 438, 442. In view of all of the other factors that justify a single plant unit here (*supra*, p. 2), the court below correctly concluded that "extent of organization" was not a controlling factor in the Board's determination.[5]

---

[4] Section 9(c)(5) provides:

> In determining whether a unit is appropriate for the purposes specified in subsection (b) of this section the extent to which the employees have organized shall not be controlling.

[5] *May Department Stores Co.* v. *National Labor Relations Board*, 454 F. 2d 148 (C.A. 9), certiorari denied, October 10, 1972, No. 71-1646, and *Westward-Ho Hotel Co.* v. *National Labor Relations Board*, 437 F. 2d 1110 (C.A. 9), relied on by petitioner (Pet. 8, 12), are factually distinguishable. In *Westward-Ho*, the court disapproved a unit confined to hotel kitchen workers in the face of its finding that the Board's policy was to certify only hotel-wide units in that industry. 435 F. 2d at 1113-1114. The court held that, in these circumstances, there is a presumption that the unit determination was controlled by extent of organization, and that the Board had not given reasons for its choice which effectively rebutted that presumption. *Id.* at 1116. Similarly, in *May Department Stores*, the court held that a unit composed of warehouse employees excluding workroom employees must be deemed to rest on extent of organization, where its selection deviated not only from customary Board policy, but also from a unit found appropriate at the same facility several years earlier, and where, in the court's view, the Board had no adequate explanation for the deviation. 454 F. 2d at

The petition for a writ of certiorari should therefore be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

PETER G. NASH,
General Counsel,

PATRICK HARDIN,
Associate General Counsel,

NORTON J. COME,
Assistant General Counsel,

LINDA SHER,
Attorney,
National Labor Relations Board.

JANUARY 1973.

150-151. Regardless of the correctness of these decisions, the situation here is entirely different. There is no indication that the Board has departed from past policy, and it has advanced reasons for its unit determination showing that extent of organization was not a controlling factor.

Local 1325, Retail Clerks v. *National Labor Relations Board* (*Adams Drug*), 414 F. 2d 1194 (C.A. D.C.), and *National Labor Relations Board* v. *Harry T. Campbell Sons'* Corporation, 407 F. 2d 969 (C.A. 4) (Pet. 8, 11-13), are also distinguishable. In *Adams Drug*, the court found a state-wide unit of drug stores to be inappropriate, finding it contrary to Board precedent, unsupportable geographically and administratively, and justified solely by extent of organization. 414 F. 2d at 1203-1205. And in *Harry Campbell*, the court found a unit composed of only one operation of an integrated quarry to be "arbitrary and capricious." 407 F. 2d at 970, 979. The unit determination here is not vulnerable on any of these grounds.

☆ U.S. Government Printing Office: 1972—473-084/458